

**Changes to Federal Family and Medical Leave Act**  
Effective January 16, 2009

**Medical Certification**

- A human resources professional, leave administrator, or management official, but *not* the employee's immediate supervisor, may ask the employee's health care provider to clarify information provided on the medical certification form.
- An employer may request recertification of an ongoing condition every 6 months in conjunction with an absence.
- If information is lacking in a Medical Certification, the employer must specify in writing what information is lacking and give the employee 7 calendar days to provide the missing information.
- Employees are required to provide medical certification within 15 days after leave is requested in all cases of FMLA leave, including foreseeable leave.

**Reporting Absences**

- Barring unusual circumstances, employees must follow their department's established call-in procedures for reporting absences, whether or not FMLA leave is requested. Failure to follow established procedures may result in denial of FMLA leave.

**Serious Health Condition**

A serious health condition is defined as:

- Two (2) visits to a health care provider for the condition within 30 days of the period of incapacity and the first visit to the provider must take place within seven (7) days of the first day of incapacity.
- A "periodic visit" for a serious chronic health condition is defined as a least two (2) visits to a health care provider per year.
- More than three (3) consecutive full calendar days of incapacity plus a regimen of continuing treatment.

**Required Notices to Employees**

Employers now have 5 business days instead of 2 business days to provide required FMLA notices to employees.

### **Penalties against Employers**

- Categorical penalties against employers for failing to appropriately designate FMLA leave have been removed. Where an employee suffers individualized harm because the employer failed to follow the notification rules, the employer may be liable.

### **Substitution of Paid Leave**

- Employees may choose to use accrued paid leave while taking FMLA leave. In order to use paid leave for FMLA leave, employee must comply with the City's normal paid leave policies including their departments' notification policy or established call-in procedure for reporting absences.

### **Perfect Attendance Awards**

- An employer may deny a perfect attendance award to an employee who does not have perfect attendance because of taking FMLA leave.

### **Fitness-for-Duty Certifications**

- An employer may request a fitness-for-duty certification prior to an employee's return to work if where reasonable job safety concerns exist.
- An employer may request that a fitness-for-duty certification specifically address the employee's ability to perform the essential functions of the job.

### **Light Duty**

- Time spent performing light duty work does not count against an employee's FMLA leave entitlement.
- An employee's right to restoration is held in abeyance during the period of time the he or she performs light duty work (or until the end of the applicable 12-month FMLA leave year).

### **No Prospective Waiver of FMLA Rights**

- Prospective waivers of FMLA rights continue to be prohibited.